

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES TYLER ROOTS,  
Plaintiff,

v.

G. CHERIAN, et al.,  
Defendants.

No. 2:23-cv-1175 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se in an action brought under 42 U.S.C. § 1983. Plaintiff filed a motion for extension of time to respond to defendants' motion to dismiss. ECF No. 31. Plaintiff also filed a motion for the appointment of counsel. ECF No. 32.

District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether "exceptional circumstances" exist, the court must consider plaintiff's likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional

1 circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of  
2 legal education and limited law library access, do not establish exceptional circumstances that  
3 warrant a request for voluntary assistance of counsel.

4 Having considered the factors under Palmer, the court finds that plaintiff has failed to  
5 meet his burden of demonstrating exceptional circumstances warranting the appointment of  
6 counsel at this time.

7 Good cause appearing, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff's motion for the appointment of counsel (ECF No. 32) is denied without  
9 prejudice;  
10 2. Plaintiff's motion for an extension of time (ECF No. 33) is granted; and  
11 3. Plaintiff is granted thirty days from the date of this order in which to file a response to  
12 defendants' motion to dismiss (ECF No. 31).

13 Dated: December 23, 2024

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15 CAROLYN K. DELANEY  
16 UNITED STATES MAGISTRATE JUDGE  
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